IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHWIN MULJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

Mr. HL Jani, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/06/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. Anil Varma for Mr. Tirmizi for the petitioner and Mr. HL Jani, learned AGP for the State. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the

impugned order of detention dated 3.11.2000 passed by the detaining authority under section 3(1) of the Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short) and the petitioner has been detained in the Baroda Jail as Class II detenu. The grounds of detention were communicated to the petitioner on 3.11.2000. As per the grounds of detention, in all three offences have been registered against the petitioner under section 379 of the Indian Penal Code and the last offence has been registered against the petitioner on 26th October, 2000.The petitioner was released on bail in respect of the said offences. Statements of the secret witnesses were recorded on 1.11.2000 and the detaining authority has claimed privilege under section 9(2) of the PASA Act and on the same day, i.e. 1st November, 2000 when the statements of the secret witnesses were recorded by the concerned police authority and on the same day, the detaining authority has verified the said statements of the secret witnesses. In all two statements of the secret witnesses were recorded by the concerned police authority and the same were verified by the detaining authority on the same day.

Learned advocate Mr. Varma has submitted that all the offences registered against the petitioner are relating to section 379, IP Code and he has relied upon the decision of this court rendered in special civil application no. 10168 of 1996 dated 6th January, 1997 and in special civil application no. 1610 of 1996 dated 3rd July, 1996 wherein this court has observed that all the cases registered against the detenu are for the alleged offences of lurking house trespass and theft filed against the detenu and, therefore, this Court has observed that there is no question of breach of maintenance of public order. This Court has also observed that the statements of the witnesses relied upon by the detaining authority are vague and general and, therefore, in absence of any cogent material against the detenu, the subjective satisfaction arrived at by the detaining authority for the purpose of passing the order of detention against the detenu is not genuine. In the aforesaid decision, this Court has also observed that these are the offences registered against the detenu which are individual incidents affecting law and order situation and in in the facts of the case, would not affect the maintenance of the public order. In the said decision, this court has also considered the apex court's decision in case of Mustakmiya Jabbarmiya Shaikih versus M.M. Mehta, C.P., reported in 1995 (2) GLR page 1268. Learned advocate Mr. Varma has also submitted that as per the grounds of detention, co detenu Ashok Patel and

Jagdish Valjibhai Patel, both were detained in respect of the same offences alleged against the petitioner. He has also submitted that the detention order in respect of Ashokbhai Damjibhai Patel has been revoked by the State Government and, therefore, the petitioner is also entitled to revocation of the order of detention. He has also submitted that if the statements of the secret witnesses were recorded on 1st November, 2000 and on the same day, they were verified by the detaining authority, then, it would amount to non application of mind and would lead to the conclusion that the detaining authority has not collected the details about the genuineness of the facts which have been given by the secret witnesses and, therefore, the genuineness of the factual aspects which have been narrated by the secret witnesses is required to be verified and not the person to be verified and, therefore, in the present case, the subjective satisfaction of the detaining authority has not been established from the facts on record.

Learned advocate Mr. Jani has relied upon para 4 of the grounds of detention and has submitted the petitioner has been considered as a dangerous person under section 2(c) of the PASA Act and before passing the impugned order of detention, the detaining authority has considered the offences registered against the petitioner as well as the statements of the witnesses whose identity has been withheld by claiming privilege under section 9(2) of the PASA Act and, therefore, according to him, the detaining authority has applied the mind and thereafter the order of detention order has been passed. He has, thus, supported the impugned order of detention.

I have considered the submissions of both the learned advocates. One fact is very much clear that the order of detention has been passed on 3.11.2000 and the last offence has been registered against the petitioner on 26.10.2000 and the statements of the secret witnesses were recorded by the concerned police authority on 1.11.2000 and on the same day, said statements were verified by the detaining authority authority. This itself shows non application of mind on the part of the detaining authority. In fact, the detaining authority has to verify the genuineness of the statements made by the secret witnesses and not the genuineness of the person whose secret statement has been recorded. It is the duty of the detaining authority to see that whatever statement made by the secret witness is correct or not. For that, the detaining authority is required to verify after collecting the details and then he is required to record the subjective satisfaction. Therefore, according

to my opinion, if the statements recorded by the concerned police authority has been verified by the detaining authority on the same day, then, it would amount to non application of mind on the part of the detaining authority and would vitiate the subjective satisfaction of the detaining authority.

I have considered two decisions of this court in special civil application no. 10168 of 1996 dated 6.1.1997 and special civil application no. 1610 of 1996 dated 3.11.1996. I have also considered the another aspect of the matter that the another co-detenu Ashok Damjibhai Patel has been detained under the PASA Act and the order of detention in case of said Ashokbhai Damjibhai Patel has been revoked by the State Government. Therefore, considering all these aspects of the matter, according to my opinion, the subjective satisfaction of the detaining authority has not been established from the record and the State has also not filed affidavit in reply challenging the averments and contentions raised in the petition though enough opportunities were given. Thus, the respondents have not been able to justify the detention order by proving that the subjective satisfaction of the detaining authority has been established from the record. Further, the offences registered against the petitioner are under section 379 of the IP Code and are individual offences which will not affect the maintenance of public order but it would be affecting the maintenance of law and order and, therefore, the detaining authority is not justified in passing the impugned order of detention against the petitioner. In view of all these facts, according to my opinion, the impugned order of detention dated 3.11.2000 is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 3.11.2000 is vitiated and resulted to quash and set aside. The detenu Ashwin Muljibhai Patel who has been detained at the Vadodara Jail, Vadodara be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

13.6.2001. (H.K. Rathod,J.)
Vyas